

APPEAL NO. 020076  
FILED FEBRUARY 21, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 28, 2001. The hearing officer determined that the respondent (carrier) is not liable for the costs of the recommended spinal surgery. The appellant (claimant) appeals the hearing officer's determination on sufficiency grounds. The carrier urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the carrier is not liable for the costs of the recommended spinal surgery. Section 408.026(a)(1), regarding spinal surgery second opinion, provides that, except in a medical emergency, an insurance carrier is liable for medical costs related to spinal surgery only if before surgery, the employee obtains from a doctor approved by the carrier or the Texas Workers' Compensation Commission a second opinion that concurs with the treating doctor's recommendation. In Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.206(a)(13) (Rule 133.206(a)(13)) the term "concurrence" is defined as follows:

A second opinion doctor's agreement that the surgeon's proposed type of spinal surgery is needed. Need is assessed by determining if there are any pathologies in the area of the spine for which surgery is proposed (i.e. cervical, thoracic, lumbar, or adjacent levels of different areas of the spine) that are likely to improve as a result of the surgical intervention. Types of spinal surgery include but are not limited to: stabilizing procedures (e.g. fusions); decompressive procedures (e.g. laminectomy); exploration of fusion/removal of hardware procedures; and procedures related to spinal cord stimulators.

Presumptive weight will be given to the two concurring opinions and they will be upheld unless the great weight of medical evidence is to the contrary. Rule 133.206(k)(4).

The claimant requests reversal of the hearing officer's determination for clarification from the claimant's second opinion doctor with regard to the proposed types of surgery. We see no ambiguities in the second opinion doctor's report which would require clarification. In view of the medical evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**TIM KELLY  
675 BERING, 3RD FLOOR  
HOUSTON, TEXAS 77057.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Robert W. Potts  
Appeals Judge